IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 21993 of 2007(R)

PETITIONER:

THAYODIYIL SAMEER
AGED 34 YEARS, S/O.T.MOOSA HAJI
THAYODIYIL HOUSE, ATHOLI.P.O.,
CALICUT

BY ADV. SRI.GEORGE VARGHESE

RESPONDENTS:
----

1. THE REGIONAL MANAGER
(AUTHORISED OFFICER UNDER THE SARFAESI ACT)
CENTRAL BANK OF INDIA, METRO PALACE
COCHIN-18

2. THE BRANCH MANAGER
CENTRAL BANK OF INDIA
KOZHIKODE BRANCH, KOZHIKODE

BY ADV. SRI.DEVAN RAMACHANDRAN, SC FOR BANK
SRI.K.M.ANEESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.21993/07

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE JUDGMENT IN WPC NO.26443/06 DT.20.10.2006.

EXT.P2: TRUE COPY OF LETTER OF PETITIONER TO R2.

EXT.P3: TRUE COPY OF LETTER DATED 21.6.2007 SENT BY R2 TO PETITIONER.

//TRUE COPY//

P.A. TO JUDGE

ANTONY DOMINIC, J.
==========
W.P.(C) NO. 21993 OF 2007 R
==========

Dated this the 18th day of December, 2007

J U D G M E N T

Petitioner, who was a defaulter to the respondent Bank to the tune of more than Rs.45 lakhs had applied for the benefit of One Time Settlement Scheme. The offer was accepted and the petitioner was to pay Rs.41 lakhs, out of which, the petitioner paid Rs.25 lakhs on 25/11/2005. In terms of the proposal that were accepted, he was to pay the balance Rs.16 lakhs on or before 24/2/06. Petitioner submits that he could not raise the amount and therefore payment could not be made in time. He approached this court at that stage and by Ext.P1 judgment in WPC 26443/06, this court permitted the petitioner to discharge the liability of Rs.16 lakhs plus interest in four equal monthly instalments, the last of which was payable on 15/2/07. It was clarified that if the petitioner commits default, it will be open to

the Bank to continue the coercive action. Even then, the petitioner was not successful in complying with the instalment granted. However, the fact remains that by 12/6/07, the entire amount along with Rs.50,000/- towards interest for the past period has already been paid. Despite all these, Bank has initiated fresh steps under the Securitisation Act and hence this writ petition has been filed.

2. The complaint of the Bank is that petitioner having not complied with the instalment facility, the benefit of OTS has been forfeited and therefore the differential amount of 10.18 lakhs should be remitted by the petitioner. On the other hand, the petitioner submits that he has already discharged the full amount in terms of the OTS and that such payment has been accepted by the Bank without demur. Petitioner also submits that he is willing to pay interest for the period from 15/2/2007 to 12/6/07, during which period, he had defaulted payment of the instalment granted by this court in Ext.P1 judgment.

3. I heard the counsel for the petitioner and also the standing counsel for the respondent Bank, who reiterates the

contentions raised in the counter affidavit. In sum and substance, the contention of the respondent is that the petitioner having not complied with the directions of this court in Ext.P1 judgment, is not entitled to the benefit of OTS scheme and therefore he should pay the entire amount.

4. Having considered the submissions made by both sides, I am inclined to take the view that the petitioner should be allowed to retain the benefit of OTS scheme. It is a fact that there has been some default committed by the petitioner, but then, it is not in controversy that initial payment of Rs.25 lakhs was made by the petitioner in terms of the OTS scheme itself and the default was only in respect of the balance payment of Rs.16 lakhs. This payment has also been accepted by the Bank and no protest is seen raised by the Bank.

5. In these circumstances, I think the petitioner deserves to be allowed to enjoy the benefit of OTS. However, for this the petitioner has to pay interest for the belated payment that he has made.

6. Accordingly, I direct that the petitioner shall pay

interest at the rate of 14% for the period from 24/2/06 to 12/6/07. However while quantifying his interest liability, the Bank will duly take into account the payments that has been made in the meanwhile towards the instalments. The Bank shall quantify and intimate the petitioner the amount due and on receipt thereof, within four weeks thereafter, the interest amount shall be paid by the petitioner. Once such payment is made and accepted by the bank, the petitioner will stand relieved of all his obligations to the Bank.

Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE.

Rp